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EXAMINER
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NGUYEN, THUY-AI N

ART UNIT	PAPER NUMBER
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1796

NOTIFICATION DATE	DELIVERY MODE
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ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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## **DETAILED ACTION**

### ***Response to Amendment***

Applicants' responses filed on October 05, 2009 have been fully considered. Claims 1 and 9 are amended. Claims 10 and 11 are added. Claim 2 has been cancelled. Claims 1 and 3- 11 are pending.

### ***Claim Objections***

Claims 2- 8, and 10- 11 are objected to because of the following informalities: the word "claim" has a capital letter "c" in middle of the sentences. Appropriate correction is required.

Claim 8 is objected to because of the following informalities: the claim is previously presented. Therefore, the status of the claim in the parenthesis is uncorrected. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomarchio et al. (US. 2003/0019508) in view of Klisch et al. (US. 4,554,098) and Shaw et al. (US. 2002/0107156).

Regarding claims 1, 10 and 11, Tomarchio et al. teach a cleaning composition in wet wipes comprising anionic surfactants including alkenyl ether sulfonate (alkyl sulphate having the formula  $\text{ROSO}_3\text{M}$ , wherein the R is unsaturated alkyl group [0061], and zwitterionic surfactants including trimethylglycine (glycine betaine, [0088]), wherein the pH of the composition is preferably from 2 to 4 [0055].

Tomarchio et al. do not teach the ratio of anionic surfactants and trimethylglycine. Klisch et al. teach a detergent composition comprising anionic surfactants (col. 4: 19-68) and zwitterionic surfactants including lauryldimethylammonioacetate (col. 560- col. 6: 16). Lauryldimethylammonioacetate and trimethylglycine both are zwitterionic surfactants and have the same backbone. Klisch et al. teach the composition, wherein the ratio of anionic surfactants to the zwitterionic surfactant is 1:2 to 3:1 (col. 6: 17- 30). Tomarchio et al. and Klisch et al. are analogous arts because they are in the same field of endeavor, namely, cleaning composition. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the ratio in the teaching of Klisch et al. in the teaching of Tomarchio et al.. The motivation is to reduce the skin irritation of the cleaning composition (Klisch et al., col. 6: 17- 20).

Tomarchio et al. teach a cleaning composition comprising alkyl ether sulfate (alkoxylate sulfate, [0063]) comprising the alkyl group. Tomarchio et al. do not teach the composition comprising the alkenyl ether sulfate. Shaw et al. teach a cleaning composition comprising alkyl ether sulfate where the R group is saturated alkyl or unsaturated alkenyl [0048]. Tomarchio et al. and Shaw et al. are analogous arts because they are in the same field of endeavor, namely, cleaning composition. At the

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time of the invention, it would have been obvious to one of ordinary skill in the art to substitute alkenyl ether sulfate of Shaw et al. in the teaching of Tomarchio et al. as an equivalent alternative of alkyl ether sulfate. An express suggestion to substitute one equivalent component for another is not necessary to render such substitution obvious. In re Fout, 675 F.2d 297,213 USPQ 532 (CCPA 1982) MPEP. 2144.06.

Regarding claim 2, Tomarchio et al. teach the composition comprising anionic surfactants including alkyl ether sulfate (alkyl phenol ethylene oxide ether sulfate [0070]) in evidence of Klisch et al. (alkyl ether sulfate, col. 2: 27- 35).

Regarding claim 3, Tomarchio et al. teach the composition, wherein anionic surfactant (alkyl sulfate) is present in an amount of 0.6 percent, and C12- C14 betaine in an amount of 0.2 percent (see the table, p. 12). Although Tomarchio et al. do not teach specific amount of trimethylglycine, it would be obvious that Tomarchio et al. will use the same amount of betaine as said above for glycine betaine because they are equivalent alternative that they are zwitterionic surfactants and used for the same purpose of reducing skin irritation [0086- 0092].

Regarding claim 4, Tomarchio et al. teach the composition comprising amphoteric surfactant (amine oxide) in an amount of 0.2 to 0.4 percent (see the table, p. 12).

Regarding claim 5, Tomarchio et al. teach that the composition is a skin detergent composition because the composition is used for cleaning and cleansing a surface, and also for skin care.

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Regarding claim 6, Tomarchio et al. teach the composition as said above.

Tomarchio et al. do not teach the composition is face wash. However, because the composition comprises the same components as said in the claim, and it is said to use for cleaning a surface including human skin. It would be obvious to one of an ordinary skill in the art at the time of the invention to have the composition for face wash to meet the wide range of expectation of the user.

Regarding claim 7, Tomarchio et al. teach the composition comprising anionic surfactant and trimethylglycine as said above. However, Tomarchio et al. do not teach the proportion in the range of the applicant. Klisch et al. teach the cleaning composition comprising anionic surfactant (alkyl ether sulfate) in an amount of from 8 to 30 percent (col. 2: 28- 35) and 1 to 8 percent of zwitterionic surfactant (abstract). Tomarchio et al. and Klisch et al. are analogous arts because they are in the same field of endeavor, namely, cleaning composition. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the proportion of anionic surfactant and trimethylglycine of Klisch et al. in the teaching of Tomarchio et al.. The motivation is to achieve a desired counter-irritant level of detergent.

Regarding claim 8, Tomarchio et al. teach the composition having the pH from 1 to 5 [0055] with the balance of water (see the table, p. 12).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klisch et al. (US. 4,554,098) in view of Tomarchio et al. (US. 2003/0019508) Shaw et al. (US. 2002/0107156).

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Regarding claim 9, Klisch et al. teach the cleaning composition comprising anionic surfactant (alkyl ether sulfate) in an amount of from 8 to 30 percent (col. 2: 28-35) and 1 to 8 percent of zwitterionic surfactant (abstract), wherein the ratio of anionic surfactant to zwitterionic surfactant is from 1: 2 to 3:1 (col. 6: 17- 30) which is overlap with the range as said the applicant, wherein the pH is in the range of from 5 to 9 (col. 7: 63- 68).

However, Klisch et al. do not teach that the zwitterionic surfactant is trimethylglycine. Tomarchio et al. teach the similar composition, wherein the zwitterionic surfactants derived from the same formula as in the teaching of Klisch et al., wherein the zwitterionic surfactants include trimethylglycine (glycine betaine). At the time of the invention, it would have been obvious to one of ordinary skill in the art to use trimethylglycine of Tomarchio et al. in the teaching of Klisch et al. as an equivalent alternative of zwitterionic surfactants.

Klisch et al. teach a cleaning composition comprising alkyl ether sulfate (alkyl ether ethyleneoxy sulfate, col. 4: 35- 48) wherein R is an alkyl group. Klisch et al. do not teach the composition comprising the alkenyl ether sulfate. Shaw et al. teach a cleaning composition comprising alkyl ether sulfate where the R group is saturated alkyl or unsaturated alkenyl [0048]. Klisch et al. and Shaw et al. are analogous arts because they are in the same field of endeavor, namely, cleaning composition. At the time of the invention, it would have been obvious to one of ordinary skill in the art to substitute alkenyl ether sulfate of Shaw et al. in the teaching of Klisch et al. as an equivalent alternative of alkyl ether sulfate. An express suggestion to substitute one equivalent

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component for another is not necessary to render such substitution obvious. In re Fout, 675 F.2d 297, 213 USPQ 532 (CCPA 1982) MPEP. 2144.06.

### ***Response to Arguments***

Applicant's arguments filed on October 05, 2009 have been fully considered but they are not persuasive.

Applicants argue that the combination of components A and B in the ratio as set forth by the applicant is reconstructed based on impermissible hindsight. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicants argue that trimethylglycine and lauryldimethylammonioacetate are different compounds having different properties, one of ordinary skill in the art would not use their proportion interchangeably to achieve the same goal. This is not found persuasive when Tomarchio et al. show the equivalent alternatives between trimethylglycine and lauryldimethylammonioacetate in the formula of zwitterionic surfactants  $(R_1-N^+(R_2)(R_3) R_4X^-$ , [0086], wherein the alkyl group R1 contains from 1 to 24 atoms [0087].



Because the rejections are deemed proper, all claims stand rejected and therefore made final.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THUY-AI N. NGUYEN whose telephone number is (571)270-3294. The examiner can normally be reached on Monday-Friday: 8:30 a.m. - 5:00 p.m. eastern time.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo/  
Supervisory Patent Examiner, Art Unit 1796

THA